

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 24-0517

SHERRI FROST,

Plaintiff/Appellee/Cross-Appellant,

v.

KEVIN R. FROST and FROST
RANCHING CORPORATION,

Defendants/Appellants/Cross-Appellees.

**CROSS-APPELLANT SHERRI FROST'S REPLY BRIEF IN RESPONSE
TO CROSS-APPELLEE FROST RANCHING CORPORATION**

On Appeal from the Montana Twenty-First Judicial District Court, Ravalli County,
Honorable Jason Marks Presiding.

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DISCUSSION

I. *Daniels* is analogous to this case and provides that a principal can ratify the acts of their agent even if there is no “successful benefit.”

The Ranch asserts that Sherri’s interpretation of *Daniels v. Dean* is based upon her “revision of the facts of that case.” (*Id.*, p. 20.) It is difficult to ascertain the Ranch’s reasoning, especially considering the Ranch is the party attempting to read facts into *Daniels* which are not there. The Ranch claims that the first element of ratification, i.e., acceptance by the principal of the benefits of the agent’s acts, was satisfied in *Daniels* because “[t]he Court held that Harold Lake ‘accepted the benefits,’ implying there was in fact some benefit arising from Dean’s ‘attempts,’ even if Daniels was not ultimately “induced to vacate his leasehold.” (Ranch Resp. Br., p. 19.)

On the one hand, the Ranch is arguing the *Daniels* Court omitted key facts from its opinion, and instead “implied” there were facts supporting the first element of ratification. Yet, on the other hand, the Ranch goes on to insinuate the Court misapplied the three-part ratification test from *Safeco Ins. Co. v. Lovely Agency* to the facts of *Daniels*. Specifically, the Ranch states “Plaintiff may find that the three-part *Safeco* analysis was improperly applied to the facts of *Daniels*, but that does not mean the opinion overruled or rejected that analysis.” (Ranch’s Resp. Br., p. 20.) Of course, Sherri has never made any such argument.

The Ranch’s positions are inherently incompatible with each other. Either the

Court “implied” that the first element of ratification was met without specifying the facts in support of the same, or the Court misapplied the *Safeco* test. The Ranch further continues to contradict itself by claiming the *Daniels* Court found there was some benefit conveyed to Lake through Dean’s attempts to induce Daniels to vacate his leasehold. (Ranch’s Resp. Br., p. 19.) Yet, the Ranch then claims “an attempt to benefit someone does not, by definition, generate any tangible thing capable of being accepted.” (*Id.*) As such, it is unclear how the Ranch comes to the conclusion that Dean’s attempts to get Daniels to vacate the property somehow conveyed an unidentified benefit to Dean.

In analyzing the first *Safeco* element, the *Daniels* Court noted Lake testified it was important to him that Daniels vacate his lease, and he was unwilling to tolerate Daniels remaining on the property and he would not have entered the deal had he thought Daniels would remain. *Daniels*, 253 Mont. at 471-72, 833 P.2d at 1083. Following the Ranch’s logic, neither of Lake’s statements are relevant to the first element of ratification under *Safeco*, which gives rise to the question of how the Court concluded that the first element was satisfied. The Ranch’s argument rests upon its proposition the Court omitted the entirety of its analysis regarding the first *Safeco* element and, for some unknown reason, replaced it with two irrelevant facts. Contrary to the Ranch’s assertion, Sherri presumes the Court did not arbitrarily decide to conceal the reasoning behind its opinion.

Further, the Ranch takes issue with Sherri's assertion that Lake did not receive a "successful benefit" by operation of Dean's harassment of Daniels. (Ranch's Resp. Br., p. 20) ("Plaintiff ignores the court's holding that Harold Lake 'accepted the benefits,' and instead asserts that there was no benefit to Lake, only an attempt to create a benefit. That may be Plaintiff's reading of the facts of *Daniels*, but it is not what the Court said . . ."). The fact the Ranch has made no effort to clarify "what the Court said" notwithstanding, Sherri has done nothing more than rely on the facts of *Daniels* as they were stated by the Court. The goal of Dean, Bolinger, and the Lakes was to get Daniels to vacate the property, as demonstrated by the fact that they delivered a thirty-day eviction notice on the same day they purchased the property. *Daniels*, 253 Mont. at 467-68, 833 P.2d at 1080. Daniels remained on the property despite Dean's attempts to run him off, and the only outcome of Dean's efforts was to draw himself, Bolinger, and the Lakes into a lawsuit. *Id.*, 253 Mont. at 468-67, 833 P.2d at 1080-81. As such, there are no facts in *Daniels* to suggest that Lake appreciated a "successful benefit" as a result of Dean's bad acts.

In this case, the Ranch shares several similarities with Lake. Where Lake testified he did not want Daniels to remain on the property, Marilyn, Randy, and Kevin Frost testified that the Ranch is important to the Frost Family and they did not want Sherri to receive any portion of the same by operation of her divorce from Kevin. *Daniels*, 253 Mont. at 471-72, 833 P.2d at 1083; (Sherri's Opening Br., pp.

12-13.) Where Lake was aware Daniels did not intend to leave his lease early, the Ranch was aware Sherri was going to seek to have the Ranch included in her marital estate in the divorce case. *Id.*; (Trial Tr., 623:20-625:1); (Trial Ex. 30.) Moreover, Randy Frost testified that the family openly discussed their worry Sherri would take part of the Ranch. (Trial Tr., 593:2-594:13.) Finally, where Lake was aware Dean refused to accept rent from Daniels and testified to the importance that was attached to getting Daniels to vacate, the Ranch was aware Kevin had kidnaped Sherri and nevertheless elected to pay for his bail and attorney fees from Ranch funds following a discussion between Marilyn and Randy, the only two partners of the Ranch who were not incarcerated. 253 Mont. at 471-72, 833 P.2d at 1083; (Trial Tr., 589:16-590:5.) The Ranch further elected to hire Kevin as a formal W-2 employee, a practice it had never done before. (Trial Tr., 640-2-641:5.)

Lake did not receive a “successful benefit” as a result of Dean’s actions, yet he was still found to have ratified the same. The Ranch does not dispute that *Daniels* is analogous to this case but instead argues that *Daniels* does not mean what it says it means. Yet, in this case, Sherri was precluded from arguing her ratification theory to the jury on the basis that the Ranch did not receive a “successful benefit” from Kevin’s kidnapping of Sherri. The Court’s holding in *Daniels* is incompatible with the District Court’s decision to grant the Ranch’s judgment as a matter of law in this case. Accordingly, the District Court incorrectly granted the Ranch’s motion for

judgment as a matter of law on the basis that Kevin failed to prevent Sherri from joining the Ranch to the divorce case, and as such its order should be reversed.

II. The fact the Jury found Kevin not to be an agent of the Ranch in relation to the theory presented to them during the first trial is irrelevant for this appeal. A reasonable jury could conclude the Ranch ratified Kevin's tortious acts.

A. An agency relationship can be created via subsequent ratification.

The Ranch proclaims Sherri is attempting to use an intentional tort to create an agency relationship, which it argues has never been done in any case throughout the country. (Ranch's Resp. Br., pp. 22-23.) As the Ranch acknowledges, however, "an agency may be created, and an authority may be conferred by a precedent authorization or a subsequent ratification." Mont. Code Ann. § 28-10-201; (Ranch's Resp. Br., p. 15.) Additionally, the Montana Supreme Court has already acknowledged "ratification can include situations where a prior agency relationship did not exist, because a 'subsequent ratification' of an unauthorized act may likewise create the agency relationship." *Erlor v. Creative Fin. & Invs.*, 2009 MT 36, ¶ 28, 349 Mont. 207, 203 P.3d 744.

Notably, there is no language in Mont. Code Ann. § 28-10-201, which limits the doctrine of ratification to certain types of acts, such as whether they are tortious or not. In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Mont. Code Ann. § 1-2-101. The

Ranch is requesting the Court insert a limitation into § 28-10-201 which is not there. If the Montana Legislature intended to limit the doctrine of ratification to non-tortious or non-criminal acts, they could have inserted language to such an effect. They did not. Accordingly, the fact the jury found Kevin was not an agent of the Ranch in relation to Sherri's vicarious liability theory is irrelevant in relation to her ratification theory.

B. A reasonable jury could conclude Kevin was an agent of the Ranch in relation to Sherri's ratification theory.

The Ranch argues the jury found that Kevin was not an agent of the Ranch, and therefore Daniels "is further distinguishable from this case. . . ." (Ranch's Resp. Br., p. 22.) What the Ranch ignores is that the jury was asked whether Kevin was an agent based upon the theory that Kevin's wrongful acts fell within the scope of his agency. (Doc. 157). In other words, the jury was asked whether Kevin's kidnapping of Sherri was incidental to an expressly or implicitly authorized act, and at least partially motivated by the agent's intent to serve the principal's interest. (*Id.*); *See also, L.B. v. United States*, 2022 MT 166, ¶ 9, 409 Mont. 505, 515 P.3d 818. As such, the jury was only asked whether Kevin was an agent in the context of whether the Ranch was vicariously liable for the kidnapping.

Being presented with only a vicarious liability theory required the jury to conclude Kevin's kidnapping of Sherri was incidental to an expressly or implicitly authorized act, and at least partially motivated to serve the Ranch's interest. As such,

if the jury found that the Ranch never expressly or implicitly authorized Kevin to stop Sherri from keeping the Ranch, or something along those lines, then they would naturally be inclined to conclude he was not an agent.

Whether the Ranch ratified Kevin's conduct, however, is a different question. Mont. Code Ann. § 28-10-602, by its own language, holds a principal liable for the wrongs of an agent which have been ratified. *Daniels*, 253 Mont. at 473, 833 P.2d at 1083. There is no requirement that the bad act be previously authorized in order for a principal to ratify the same. Under a vicarious liability theory, a finding that the kidnapping was not incidental to an expressly or implicitly authorized act stops the analysis, and the fact the Ranch paid for Kevin's bail, attorney fees, living expenses, and changed its entire operation to make him a formal W-2 employee become irrelevant.

Drawing all inferences in Sherri's favor, as is required when evaluating a motion for judgment as a matter of law, presents more than sufficient evidence for a reasonable jury to conclude that the Ranch ratified Kevin's actions as its agent. *Patch v. Hillerich & Bradsby Co.*, 2011 MT 175, ¶ 24, 361 Mont. 241, 257 P.3d 383. As a preliminary matter, the District Court acknowledged there was sufficient evidence for a reasonable jury to conclude Kevin is an agent of the Ranch. (Trial Tr., 1270:5-7) ("I think you have a really good case for agency, but given the way I have to analyze this, I'm going to deny your motion on that.") Further, although the Ranch

claims Marilyn personally paid Kevin's bail and legal expenses, it is undisputed those funds were paid from the Ranch and then later recharacterized as a personal loan at Kevin's insistence. (Trial Tr., 632:14-366:6.) In fact, the Ranch did not even attempt to characterize the provision of funds to Kevin as a "loan" until over a year after the kidnapping. (Trial Ex. 25.) Given that the Ranch acknowledged it did not want Sherri to receive any part of it by way of the divorce, and went out of its way to provide Kevin nearly one hundred thousand dollars of support and reshaped its operation to make Kevin a formal employee, there is more than sufficient evidence for a reasonable finder of fact to conclude that the Ranch ratified Kevin's conduct.

C. A reasonable jury could conclude the Ranch had knowledge of Kevin's intention to kill Sherri or otherwise intimidate her into stopping her pursuit of the Ranch.

The Ranch goes on to argue there is no evidence Marilyn had any knowledge of Kevin's intention to kill Sherri. (Ranch's Resp. Br., p. 27.) Of course, Marilyn would never say she knew her son set out to kill Sherri on the morning of February 9, 2016. Given the number of lies Kevin has told regarding the kidnapping, however, any reasonable person, including Marilyn, could conclude Kevin's goal was to kill or otherwise intimidate Sherri from taking the Ranch.

Detective Matt Cashell interviewed Kevin after he turned himself in and eventually became the lead investigator over the kidnapping. (Trial Tr., 211:9-13; 214:4-23.) Sergeant Cashell also engaged in a recorded interview with Kevin after

he turned himself in. (Trial Ex. 15.)¹ As shown by the interview, Kevin’s version of the kidnapping is drastically different than Sherri’s. (*Id.*) As told by Kevin, he got a distressing call from his divorce attorney the night before the kidnapping and “something clicked.” (Trial Ex. 15, 6:10-8:06.) After not sleeping the night before, Kevin woke up at approximately 4:30-5:00 a.m. and decided he wanted to “talk” with Sherri. (*Id.*) Kevin expected Sherri would be going to work that morning, so he set out to Brian’s house so he could talk with her. (*Id.*)

Kevin did not go straight to Brian’s house, however. (*Id.*, 22:24-24:06.) Instead, he drove his red Ford F-350 into Hamilton and swapped it for the black GMC Yukon he had purchased a week and a half before on January 28, 2016, and parked on Third Street. (*Id.*); (Trial Tr., 1045:25-1046:5.) Kevin grabbed his gloves, a stun gun, and a cooler full of alcohol and Sprite and set off in the Yukon which was not licensed, registered, or otherwise associated with him. (Trial Tr., 1047:18-1048:12); (Trial Ex. 15, 22:24-22:40).

According to Kevin, he decided to take the Yukon to Brian’s house because he knew Sherri would not recognize it and figured Sherri would not stop to talk with him if she saw his pickup. (Trial Tr., 1048:2-7; Trial Ex. 15, 1:02:40-1:03:18.) In his interview with Sergeant Cashell, Kevin said his original plan was to drive to the

¹ Portions of Exhibit 15 were muted/edited out upon the stipulation of the parties to remove dead air and matters excluded by the District Court’s order on various motions *in limine*.

driveway and either Kevin would get in Sherri's car, or Sherri would jump in the car with him, and they would go for a drive. (Trial Ex. 15, 23:15-22:49; 1:03:12-1:03:25.) It is unclear why Kevin allegedly believed Sherri would stop for a car she did not recognize and had never seen before. After arriving at Brian's house, Kevin claims he thought about it and concluded Sherri was not going to want to talk with him. (*Id.*); (Trial Tr., 1048:8-12.) Upon reaching this conclusion, Kevin allegedly decided it was a better idea to park the Yukon up the Mill Creek Trailhead and walk a mile through the snow in pitch black darkness to Brian's driveway. (*Id.*); (Trial Ex. 15, 25:40-26:14.)

Kevin claims he put the garbage can in the middle of the driveway and waited for Sherri to leave for work. (Trial Ex. 15, 22:50-23:58.) When Sherri got out of her car to move the garbage can, Kevin claims he met her at her driver's side door and said something along the lines of "Sherri" or "I want to talk with you." (*Id.*, 26:43-27:10; 30:36-31:09.) Allegedly, Kevin's voice was calm when he first approached Sherri. (Trial Tr., 1023:6-10.) Kevin claims Sherri was frightened in response, and asked him "what's going on," to which Kevin reiterated he just wanted to talk. (Trial Ex. 15, 24:15-24:20.) Sherri said she did not want to get in the car, and Kevin insisted she get in so they could talk. (*Id.* 27:45-27:56.) When Sherri continued to refuse, Kevin grabbed Sherri's wrist which he claims just coincidentally ended up behind her back as he "pleaded" with Sherri to get in the car. (Trial Tr., 1024:15-1025:11);

(Trial Ex. 15, 34:18-35:51.) In Kevin's estimation, he talked with Sherri for approximately three minutes at the end of the driveway and never saw Brian Moore that morning. (Trial Tr., 1022:23-1023:10.)

After forcing Sherri into her car, Kevin claims he drove up to the Mill Creek Trailhead, where he and Sherri casually switched to the Yukon. (Trial Ex. 15, 45:35-48:05.) There was never a fight at the trailhead according to Kevin. (*Id.*, 45:35-48:05; 1:04:24-1:05:05.) The trailhead is also where Kevin pulled the stun gun out of his jacket pocket. (Trial Ex. 15, 48:40-50:12.) The reason why he had the stun gun, however, differs from the interview immediately after turning himself in and his testimony at trial. During his police interview, Kevin said, "when I got out of the pickup, I did put [the stun gun] in my pocket and I took it with me, again I don't know where my head was." (*Id.*, 48:44-49:34.) Kevin continued, "but yeah, I did have it, and at one point, it's got a flashlight on it, and I was using it, actually, when we got into the GMC, into the Yukon, I, I think I got it out because the keys dropped on the floor, and I couldn't find them." (*Id.*, 49:35-49:52.) Allegedly, the keys dropped between the seat and the console and Kevin had to use the flashlight on the stun gun to find them. (*Id.*, 49:53-50:02.)

When later asked by Sergeant Cashell why he had the stun gun, Kevin said, "I don't know, I don't know, I've had it for a long time, and I just threw it in my coat pocket. I don't know why." (*Id.*, 1:25:24-1:25:35.) When expressly asked whether

he took the stun gun as a flashlight, Kevin responded “I was not intending to hurt her with it, no. That’s what I’m saying.” (*Id.* 1:27:57-1:28:07.) At trial, Kevin testified as follows:

Q. Okay. And I believe in the videos we already watched you say that you weren’t sure why you grabbed [the stun gun] on the morning of February 9, 2016; is that accurate?

A. I don’t recall saying that. I grabbed [the stun gun] because I knew that the Yukon did not have an overhead console light.

Q. So you’re using it for a flashlight?

A. Yes.

(Trial Tr., 1020:11-19.) Kevin could not use the flashlight on his phone because he “forgot” it that morning. (Trial Ex. 15, 53:50-54:10.) Notably, Kevin also admits there was a knife in the Yukon. (*Id.*, 50:23-50:46.)

Kevin claims he grabbed Sherri’s phone as they exited her car and got into the Yukon. (*Id.*, 1:10:43-1:10:50.) Sherri’s phone rang a couple of times, and Kevin reached over and shut it off. (*Id.*, 1:10:50-1:11:36.) After driving around for a while, Kevin took Sherri to Dean Allen’s shop. (*Id.*, 1:11:54-1:12:16; 1:15:30-1:15:41.) After arriving in the shop, Kevin claims he and Sherri sat down on a couple of stools with the alcohol between them and had a nice cordial chat. (*Id.*, 1:15:42-1:16:08.) Sherri got cold and developed a headache after sitting in the shop for a while, so Kevin took her to Dean Allen’s house so they could warm up and get some ibuprofen. (*Id.*, 1:13:30-1:14:08.) While Kevin originally thought they would leave

after getting some ibuprofen, he instead claims they ended up sitting on the couch and continuing their talk for a couple of hours. (*Id.*, 1:14:08-1:14:40.) A little later, Kevin claims he decided to take Sherri to the emergency room because of her intoxication. (*Id.*, 9:10-10:15.)

Kevin is insistent he never tried to control Sherri other than the time he ambushed her at the end of Brian's driveway. (*Id.*, 13:30-13:46; 1:16:58-1:17:12.) Further, he acknowledges he knew what he was doing was wrong, but that events just got out of hand and did not unfold like he thought they would. (*Id.*, 14:30-15:00; 59:10-59:36). According to Kevin, he thought he and Sherri would have a couple of drinks and talk for about 20 to 30 minutes. (*Id.*, 1:00:10-1:01:20.) It is unclear, however, whether Kevin still thought they were going to have a couple of drinks after he left them in the Yukon to march down to Brian's driveway from the Mill Creek Trailhead. It is also unclear how Kevin believed that alcohol would "loosen" Sherri up over the course of a 20-to-30-minute conversation. (Trial Tr., 1089:18-1090:9).

There is also at least one major inconsistency regarding what Kevin allegedly wanted to talk with Sherri about. Kevin testified during trial that his attorney in the divorce case, Gail Goheen, called him the night before the kidnapping to talk to him about a parenting plan for Sherri and Kevin's then 16-year-old son, Treyden Frost. (Trial Tr., 1062:24-1063:9.) The parenting plan called for counseling for both

Treyden and Sherri, and Kevin allegedly had an “emotional” conversation with Treyden about it that night. (*Id.*, 1063:10-15.) As Kevin further testified during trial, he agreed with the proposed parenting plan and thought counseling would be beneficial for Treyden. (*Id.*, 1063:16-1064:2.) Treyden, on the other hand, was not keen on the idea and did not want to partake in counseling. (*Id.*, 1064:3-8.)

Yet, Kevin never mentioned this talk with Treyden during his interview with Sergeant Cashell. (Trial Ex. 15.) To the contrary, Kevin told Sergeant Cashell the following:

I worry a lot about my kids. And it doesn't seem like . . . [Sherri] cares about the kids. I guess I've learned a little bit today . . . that she . . . does love the kids. . . I couldn't understand. . . she's not really reaching out to the kids and that's the part that's the hardest for me. . . I feel like [the kids] are losing their mom.

(Trial Ex. 15, 15:35-16:55.) When later asked by Sergeant Cashell what emotions he felt that day, Kevin replied he felt hurt and did not understand why Sherri “is having difficulties with her kids, with our kids.” (*Id.*, 1:29:28-1:30:28.) Kevin went on to explain:

I guess the main thing was hurt, you know. I can't come up with any words I guess for it. Again, I just wanted an understanding as to what she's doing, what she's feeling . . . why the issues with the kids. Because the kids, right after this happened, the kids were talking to her. And it seemed like she was kind of just being angry and pushing them away, and I was trying to understand what it was, why she was doing what she was doing when at one point she was such a loving mother.

(*Id.*, 1:30:54-1:32:00.)

While Kevin depicts the kidnapping as a minor disagreement between a divorcing couple, the evidence shows this was a violent and premeditated ambush. Kevin claims he just wanted to “talk” with Sherri regarding counseling for Treyden, which he agreed with, yet in his interview with Detective Cashell he said Sherri was not reaching out to the kids. Kevin claims he grabbed the stun gun because he knew the dome light in the Yukon did not work, yet in his interview with Detective Cashell he claimed he did not know why he brought the stun gun and only pulled it out once he dropped his keys in the Yukon. The most glaring contradiction is Kevin’s claim he and Sherri talked calmly at the end of Brian’s driveway for three minutes before he kidnapped her, which is incompatible with Brian’s testimony that he saw Sherri’s taillights flash and then heard her scream out for help an instant later. (Trial Tr., 288:1-291:22.)

Kevin’s story regarding the kidnapping is marred by lies and logical fallacies. The Ranch, at a minimum, has been aware of these lies for the entirety of this case. Yet, at no point has the Ranch withdrawn its stalwart support for Kevin, and it has continued to employ him. In light of the importance of the Ranch as testified to by Kevin, Marilyn, and Randy, the fact that Kevin, Marilyn, and Randy all knew that Sherri was seeking to add the Ranch to the divorce months before the kidnapping, and the number of lies and inconsistencies in Kevin’s version of the kidnapping, any reasonable finder of fact could conclude that the Ranch had knowledge of the facts

and circumstances indicating an intention to adopt Kevin’s bad actions. Accordingly, the District Court’s grant of the Ranch’s motion for judgment as a matter of law should be reversed.

III. Whether and to what extent the Ranch’s aid to Kevin was motivated by familial connection is a question of fact that must be answered by the jury.

The Ranch asserts “Sherri argues that the well-established *Safeco* test requiring acceptance of a benefit by the principal is problematic from the standpoint of public policy because it may shield a principal from liability if an attempted crime or tort by its agent is unsuccessful. (Ranch’s Resp. Br., p. 23 (internal quotation omitted)). This is not what Sherri argued. Rather, Sherri’s point is that requiring a “successful benefit” as an element of ratification creates an arbitrary line that affords principals a safe haven to provide their agents support and defense with no repercussions because the agent was unsuccessful in the commission of their tort.

The Ranch claims that principals can still be found liable for the wrongful acts of their agents for acts within the scope of their agency. (Ranch’s Resp. Br., p. 24.) While that is all well and good, the Ranch makes no effort to explain why ratification should be limited to those instances where an agent is successful in the commission of their wrongful act. Under the Ranch’s logic, Lake should not have been liable for Dean’s wrongful acts in *Daniels* because he failed to get Daniels to vacate the property. *Arguendo*, notwithstanding the fact that *Daniels* predates cases like *L.B.*

that developed Montana agency law, Daniels would have then had to show that Dean was either expressly authorized to harass him or that his harassment was incidental to an expressly or implicitly authorized act. Yet, all Lake would have to do is plead ignorance and testify he never instructed Dean to take any acts and Daniels' road to recovery against Lake would be significantly hampered, if not foreclosed all together.

There is nothing in *Daniels* to suggest Lake provided any aid and support to Dean, but Lake was found to have ratified Dean's conduct despite the fact he was unsuccessful in his goal. In contrast, the Ranch did significantly more to protect Kevin following the kidnapping despite the fact that it is undisputed his crime was violent and premeditated. The Ranch leads a parade of horribles by asking whether a family member is under a duty to disown another family member because "they unsuccessfully tried to do something they thought would benefit you[.]" (Ranch's Resp. Br., p. 25.) The Ranch, however, disregards the fact it was not Kevin's family helping him immediately after the kidnapping. It was the Ranch, and it was not until over a year later, at Kevin's insistence, that those funds were recategorized as a "personal loan." Although the Ranch claims that "help for a family member should not equate with liability for that family member's wrongful actions. . .," it is undisputed the funds for Kevin's aid initially came from the Ranch, not Kevin's family.

Similar to *Daniels*, there is significant evidence to suggest the Ranch condoned and ratified Kevin's wrongful actions. The fact that Kevin was unsuccessful in his goal and the Ranch was eventually joined in the divorce case is analogous to Dean in *Daniels*. While the Ranch is free to argue Marilyn aided Kevin as his mother, whether the Ranch aided Kevin as an entity and ratified his wrongful acts is a question of fact that must be answered by the jury.

CONCLUSION

For the foregoing reasons, the District Court's grant of the Ranch's motion for judgment as a matter of law should be reversed.

DATED this 13th day of May 2025.

Respectfully Submitted:

SIEFERT & WAGNER, PLLC

By: /s/ Matt Rossmiller
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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing REPLY BRIEF is proportionately spaced in 14-point roman, non-script text and contains 4687 words excluding brief's cover, table of contents, table of authorities, certificate of compliance and certificate of service.

DATED this 13th day of May 2025.

SIEFERT & WAGNER, PLLC

By: */s/ Matt Rossmiller* _____

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CERTIFICATE OF SERVICE

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